Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1516

ARCHIE PELTZMAN,

Petitioner,

v.

CENTRAL GULF LINES, INC.,

Respondent.

BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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Question Presented

Does the issuance of a reasoned Opinion and Order by the Court of Appeals, without a lengthy dissertation in support thereof, raise any special and important reasons warranting the grant of a Writ of Certiorari?

Statute Involved

Fed. Rules Civ. Proc. rule 60(b), 28 U.S.C.A. is pertinent herein.

Statement

Preliminary Statement

This is petitioner's third attempt to obtain a Writ of Certiorari from this Court.

A full and comprehensive review of the record was afforded petitioner, on three separate occasions, by both the United States Court of Appeals for the Second Circuit and the United States District Court for the Southern District of New York.[1] On each occasion, petitioner's legal arguments were found to be without substance.

The present proceeding is vexatious and an abuse of the judicial process. It is respectfully submitted that the time has come to bring this litigation to a conclusion.

Background and Prior Proceedings

Petitioner, Archie Peltzman, a former employee of respondent, Central Gulf Lines, Inc., was discharged in 1971 pursuant to the Union Security clause of a collective bargaining agreement between respondent and petitioner's former union, the American Radio Association, AFL-CIO ("ARA").

Petitioner unsuccessfully sought to have the National Labor Relations Board's Regional Director issue complaints against both respondent and the ARA.

Those denials were affirmed by the Board's General Counsel. Petitioner's subsequent attempts to obtain judicial review were rejected by both the United States Court of Appeals for the Second Circuit and this Court.[2]

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[1] See pp. 4-5, *infra*.

[2] *Archie Peltzman* v. *National Labor Relations Board*, Docket No. 72-1091, not officially reported, *cert. denied*, 409 U.S. 887, *rehearing denied*, 409 U.S. 1050 (1972).

Thereafter, petitioner brought actions against the ARA in Supreme Court, New York County and against respondent in the United States District Court for the Southern District of New York, both based on the same subject matter, *i.e.*, his discharge.

Petitioner's action against the ARA was dismissed[3] as was his action against respondent.[4] On appeal from the latter dismissal, the Court of Appeals remanded to the District Court on one issue.[5]

The District Court then held a two-day hearing and again granted summary judgment dismissing the complaint.[6] Its decision was affirmed by the Court of Appeals.[7]

Petitioner next made a motion on November 23, 1976, pursuant to Rule 60(b) of the Federal Rules of Civil Procedure ("FRCP"), seeking to vacate the District Court's judgment of December 10, 1974. That Court, by the Honorable Whitman Knapp, denied the Motion without opinion in a decision entered November 26, 1976.

This denial was affirmed by the Court of Appeals in a decision filed on January 26, 1978.[8] Petitioner's petitions for rehearing were denied on March 15, 1978.[9] Petitioner now seeks a Writ of Certiorari to review the latest Court of Appeals affirmance.

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[3] *Peltzman* v. *American Radio Association*, 69 Misc. 2d 17, *aff'd.* 40 A.D.2d 631 (1st Dept. 1971), *motion for leave to appeal denied* (not officially reported), *cert. denied*, 411 U.S. 916, *reh. denied*, 411 U.S. 977 (1973).

[4] *Peltzman* v. *Central Gulf Lines, Inc.*, 86 LRRM 2127 (S.D.N.Y. 1974) (not officially reported).

[5] 497 F.2d 232 (2d Cir. 1974).

[6] 88 LRRM 2924 (S.D.N.Y. 1974) (not officially reported).

[7] 523 F.2d 96, *motion for rehearing en banc denied* (not officially reported) (2d Cir. 175), *cert. denied*, 423 U.S. 1074, *reh. denied*, 424 U.S. 979 (1976).

[8] Appendix B to Petitioner's Petition.

[9] Appendices C and D to Petitioner's Petition.

ARGUMENT

The Court Of Appeals' Actions Were Correct And The Petition Presents No Issue Warranting Further Review. Accordingly, The Writ Should Not Be Granted.

Petitioner's contention that the Court of Appeals "blatant[ly] refused to obey the elementary rules of federal civil procedure"[10] by ignoring all documents submitted by him on his most recent appeal to that Court is wholly contrary to the facts.

Petitioner would lead this Court to believe that the Court of Appeals was not cognizant of the voluminous documentation that supported his appeal of a District Court denial of his FRCP Rule 60(b) Motion. However, the facts reveal that the Court of Appeals has had the record or some portion thereof before it on no less than three separate occasions.

In 1974, on appeal from a District Court grant of summary judgment in respondent's favor, the Court of Appeals rejected all of petitioner's legal arguments but remanded to the District Court on one narrow issue.[11]

On remand, the District Court, after an extensive two-day hearing which included numerous exhibits and affidavits as well as extensive legal briefs, again granted summary judgment in respondent's favor. For a second time the Court of Appeals reviewed the record and this time wholly affirmed the summary judgment.[12]

Finally, after the District Court's denial of petitioner's FRCP Rule 60(b) Motion, the Court of Appeals delved into the record for the third time and, contrary to petitioner's contention, issued an opinion affirming the District Court decision. Thus, the Court of Appeals held that:

> "The district court did not abuse its discretion in denying the motion to vacate the judgment under Federal Rule of Civil Procedure 60(b) because appellant's affidavit does not provide any basis for finding there was fraud or mistake in the prior judgment or that any newly discovered evidence has ben found."[13]

That the Court of Appeals did not see fit to promulgate a lengthy dissertation in support of this holding does not warrant a finding that petitioner's rights have been violated. Clearly, petitioner has presented no legal issue warranting further review by this Court.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

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[10] Petitioner's Petition, p. 9.

[11] 497 F.2d 232 (2d Cir. 1974).

[12] 523 F.2d 96, footnote 7, *supra*.

[13] Appendix B to Petitioner's Petition, p. 3a.